

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

Leonard Jones,

Debtor

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Chapter 13

Case No. 21-12428-elf

**CREDITOR’S, DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE, IN
TRUST FOR REGISTERED HOLDERS OF LONG BEACH MORTGAGE LOAN
TRUST 2005-2, ASSET BACKED CERTIFICATES, SERIES 2005-2,
MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO PURSUE LITIGATION**

Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Long Beach Mortgage Loan Trust 2005-2, Asset Backed Certificates, Series 2005-2 (hereinafter, the “Trust”), a secured creditor in the Chapter 13 Bankruptcy of Debtor Leonard Jones (hereinafter, “Debtor”) by and through its attorney Eckert Seamans Cherin & Mellott, LLC, files its unopposed Motion for Relief from Stay, seeking entry of an order permitting the Trust to file a state court action to strike an erroneously recorded Release of Mortgage and reinstate the Mortgage, and in support thereof, states as follows:

BACKGROUND

1. Debtor executed a mortgage, dated December 29, 2004, in favor of Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Weichert Financial Services, in the amount of \$116,000.00, recorded in the Recorder of Deeds Office of Delaware County, in Book 00392, at Page 1307, as Instrument Number 2005004666, on January 13, 2006, (“Mortgage”) encumbering the property found at 816 Church Lane, Yeadon, Pennsylvania 19050 (“Property”).

2. The Trust is the successor and current holder of the Mortgage.

3. A Release of Mortgage was erroneously executed and recorded in the Recorder of Deeds Office of Delaware County, in Book 06352, at Page 2396, as Instrument Number 2019037293, on July 11, 2019 (“Release”).

4. On September 3, 2021, Debtor filed a Chapter 13 Voluntary Petition for Individual (“Bankruptcy”) in the United States Bankruptcy Court for the Eastern District of Pennsylvania (“Court”).

5. The Trust entered its appearance in the Bankruptcy and filed a claim against the Debtor for the amount of the debt owed by Debtor secured by the Mortgage.

6. The Court confirmed the Debtor’s Chapter 13 Plan on December 21, 2021.

7. The debt, secured by the Mortgage, remains outstanding and is due and owed by the Debtor to the Trust.

8. The Mortgage should remain as a perfected first lien security encumbering the Property.

9. The Trust has identified its error and seeks to strike the erroneously recorded Release and reinstate the Mortgage.

10. In order to strike the erroneously recorded Release and reinstate the Mortgage, the Trust must petition the Court of Common Pleas of Delaware County for an order to the same effect.

11. The Trust cannot take any curative actions as a result of the Automatic Stay in the Bankruptcy.

RELIEF FROM STAY

12. Relief from the automatic stay is permitted under 11 U.S.C. § 362(d), which states, in relevant part:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay –

(1) for cause, including lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362(d).

13. Cause exists in the form of a lack of adequate protection, as the Mortgage was erroneously released on the Property and the Trust is required to take the necessary action in state court to strike the Release and reinstate the Mortgage.

14. Based on the foregoing, the Trust moves this Honorable Court for an order pursuant to 11 U.S.C. § 362 granting the Trust relief from the automatic stay with regard to the Property and Mortgage so that the Trust may take any and all actions necessary, including the commencement of suit in state court, to strike the erroneously recorded Release and reinstatement the Mortgage to its first lien position encumbering the Property.

15. Except to the extent expressly set forth in Paragraph 12 hereof, the provisions of Section 362 of the Bankruptcy Code, including, without limitation, those provisions prohibiting execution, enforcement, or collection of any judgment that may be obtained against the Debtor from and against any assets or properties of the Debtor's estates (as defined in Section 541 of the Bankruptcy Code), shall remain in full force and effect, and neither the Trust nor any of their agents, attorneys, or representatives shall take any action or attempt to cause any action to be taken to collect all or any portion of any such judgment from the assets or properties of the Debtor's estates. Nothing contained herein shall constitute or operate as a waiver or modification

of the Automatic Stay so as to permit the prosecution against the Debtor of any claims by any person or entity other than the Trust with respect to the actions described in Paragraph 12.

WHEREFORE, Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Long Beach Mortgage Loan Trust 2005-2, Asset Backed Certificates, Series 2005-2, respectfully asks the Court to lift the automatic stay applicable to the Property and Mortgage for the limited purpose of taking any and all actions necessary, including the commencement of suit in state court, to strike the erroneously recorded Release and reinstatement the Mortgage to its first lien position encumbering the Property; direct that its Order lifting the automatic stay shall become effective immediately and shall not be subject to any further stay; and grant such other relief as may be appropriate under the circumstances.

Dated: March 10, 2023

Respectfully submitted,

/s/ Nicholas F. Borsuk

Nicholas F. Borsuk

Pa. I.D. No. 316297

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*Counsel for Deutsche Bank National Trust
Company, as Trustee, in trust for registered
Holders of Long Beach Mortgage Loan Trust 2005-
2, Asset Backed Certificates, Series 2005-2*

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2023, a true and correct copy of the foregoing *Creditor's, Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Long Beach Mortgage Loan Trust 2005-2, Asset Backed Certificates, Series 2005-2, Motion for Relief From the Automatic Stay to Pursue Litigation* was filed with the Court using the CM/ECF system and served on the below parties in the following manner:

Via First Class Mail

Leonard Jones
816 Church Lane
Lansdowne, PA 19050

Via Electronic Notice

Kenneth West
Office of the Chapter 13 Standing Trustee
1234 Market Street - Suite 1813
Philadelphia, PA 19107

Rebecca A. Solarz, Esquire
KML Law Group, P.C.
701 Market Street, Suite 5000
Philadelphia, PA 19106

Stephen V. Bottiglieri, Esquire
230 N. Monroe Street
Media, PA 19063

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337 West State Street
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Portnoff Law Associates, Ltd.
2700 Horizon Drive, Suite 100
King of Prussia, PA 19406

/s/ Nicholas F. Borsuk

Nicholas F. Borsuk